

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF GERALD) APPEAL NO. 07-A-2024
AND HELEN WEAST from the decision of the Board) FINAL DECISION
of Equalization of Ada County for tax year 2007.) AND ORDER

WASTELAND PROPERTY APPEAL

THIS MATTER came on for hearing September 19, 2007, in Boise, before Hearing Officer Steve Wallace. Board Members Lyle R. Cobbs, David E. Kinghorn and Linda S. Pike participated in this decision. Appellants Gerald and Helen Weast appeared. Chief Deputy Assessor Tim Tallman and Appraiser Alan Smith appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization denying the protest of the valuation for taxing purposes of property described as Parcel No. S0407336401.

The issue on appeal is whether subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-604.

The decision of the Ada County Board of Equalization is affirmed.

FINDINGS OF FACT

Subject property fronts on Highway 44, about a mile west of Star, Idaho. The assessed land value is \$30,000. Appellants request the category of subject land be changed to agricultural, substantially reducing the assessed value.

The subject property is 2.690 acres adjacent to Appellants' homesite, residence and 2.970 acres of contiguous irrigated agricultural land. In 2007 the classification of subject acreage changed from irrigated agricultural land to residential property and the assessed value increased from \$4,200 to \$30,000.

Appellants described the subject as part of a farm and maintained the farm produced crops and subject is fenced and grazed with horses and cattle. The farm produced a net profit

in 2006 and Appellants maintain the property meets the qualifications of IDAPA 35.01.03, Rule 645.03.d, and should be assessed as agricultural land.

The County inquired as to when the cattle were placed on subject property. Appellants purchased the cattle in August, 2007 and put them on subject to graze. Prior to purchasing the cattle, two horses grazed on subject. Appellants noted the horses kept the grass down and helped to prevent a fire hazard.

Photographs of the subject were submitted. Appellants maintained it had been four to five years since cattle have been grazed on subject property, which lies partially in a flood district. Machinery is parked on subject.

Respondent opined subject did not meet the criteria of property devoted to agricultural use and subsequently, the classification was changed to residential use and the assessed value based on market value. The subject was valued together with the contiguous homesite and consideration was given to the 50 foot easement for the drainage canal running through the property.

Respondent submitted several photographs of subject which indicates the current use. A copy of Idaho Code Section 63-604 was included as well as a copy of IDAPA property tax rule 645 which addressed land devoted to agricultural use. Respondent noted subject is part of a total property which includes over five acres of land. The statute requires that to qualify to have land classified as agriculture, it must be used to produce field crops, nursery stock or for the grazing of livestock as part of a for-profit enterprise, or is leased for grazing or in a retirement rotation program. After the County Appraiser visited with Appellants, he determined that was not the case

Three land sales in the general area of subject were submitted for comparison to the

subject. These sales were time adjusted and sold for \$68,191, \$40,200 and \$93,653 per acre. Subject homesite, including subject land, is assessed for \$40,572 per acre. Consideration was given for the drainage canal which runs through the subject, even though a certain amount of acreage is not set aside as waste land.

Appellants maintained Respondent's sales were not comparable and more acreage should be classified as waste land

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The issue in this appeal is whether the subject property, contiguous to Appellants' homesite, qualifies to be categorized and assessed as agricultural ground, for grazing purposes.

According to Appellants, previously there were horses grazing the ground, and cattle were not purchased until August 2007.

According to the Respondent, the land was not actually used for the grazing of livestock other than personal use horses prior to August of 2007. Idaho Code specifically prohibits the exemption be applied to land used for the grazing of horses for personal use or pleasure.

Idaho Code defines land actively devoted to agriculture.

Idaho Code § 63-604.

LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For property tax purposes, land which is actively devoted to agriculture as part of an agricultural enterprise shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

- (i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or
- (ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or
- (iii) It is used by the owner for the grazing of livestock to be sold as part of a net profit-making enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or
- (iv) It is in a cropland retirement or rotation program.

(b) The area of such land is five (5) contiguous acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and

- (i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owner's or lessee's annual gross income; or
- (ii) It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars (\$1,000) or more. When the area of land is five (5) contiguous acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.

(2) Land shall not be classified or valued as agricultural land which is part of a platted subdivision with stated restrictions prohibiting its use for agricultural purposes, whether within or without a city.

(3) *Land utilized for the grazing of a horse or other animals kept primarily for personal use or pleasure rather than as part of a bona fide profit-making agricultural enterprise shall not be considered to be land which is actively devoted to agriculture. (Emphasis added.)*

Sections 2 and 3 describe circumstances under which property does not qualify as agricultural land. Section 3 of the statute precludes subject from qualifying as agricultural land, because, according to the record, horses grazed subject prior to mid 2007.

The agricultural exemption is a use exemption. The property must meet certain criteria in order to qualify. The Board finds in this case under these circumstances, the property did not meet the criteria of agriculturally exempt property.

The County presented three sales of acreage like subject on which to base the assessed

value. Appellants claimed the comparable sales were not comparable to subject. However, no additional sales were offered for the Board to consider.

The Board finds the subject property does not qualify as agriculturally exempt and the sales presented by the County support the assessed value of subject.

Appellants have not presented evidence to support a reduction in value, or that error exists in the current assessment. In this case, the Board affirms the decision of the Ada County Board of Equalization.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

MAILED DECEMBER 18, 2007